IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINAL SIDE WRIT PETITION NO.3212 OF 2004

Padmashri Dr. Vithalrao Vikhe)
Patil Foundation's Medica,l)
College, Vilad Ghat, P.O.Vadgaon)
Gupta, Ahmednagar-414 111.)..Petitioners

Versus

1.Pravesh Niyantran Samiti,)
2.Shri B.D. Chavan, Chairman,)
Pravesh Niyantran Samiti)
3.Sujit B. Kadam)
4.Kaustubh A.Shah)
5.Chetan Potdar)
6.Suyesh Rawat)
7.Kevin M. Desai)
8.Hrishkesh Pandit,)..Respondents

Mr.T.N.Subramaniam with Mr. R.G.Ketkar, for the Petitioner

Mr. Girish Godbole with Mr. Nitin Muley for Respondent No.1.

Mr. A.A. Kumbhakoni, Add. Adv. General for State.

Mr. R.V. Walawalkar, i/b. Sameer Bhalekar, for Responddent Nos. 5 to 8.

WITH

APPELLATE SIDE WRIT PETITION NO.9252 OF 2004

1.Suyash Chandrashekar Rawat)
2.Kevin Mayank Desai)
3.Kaustubh Ashok Shah)
4.Chetan Maruti Poddar)
5.Rushinkesh Ashok Pandit).Petitioners

Versus

1.The State of Maharashtara)
through its Secretary to the)
Ministry of Medical Education)
2.Padmashree Dr.Vithalrao V.K.)
Patil Foundation Medical)
College.)
3.Parvesh Niyantran Samiti)
4.Association of Management of)
Unaided Private Medical &)
Dental Colleges)
5.Rakaesh Bhagwan Demde)
6.Pratik Pramod Bahakar)

7.Gaurav Mahesh Sharma)
8.Shifa Akif Shaikh)
9.Sahir Jangam)
10.Parag Chandrakant Bhole)..Respondents
11.Medical Council of India)
12.Maharashtra University of)
Health Sciences)

Mr. Girish Godbole with Mr. Nitin Muley for
Petitioenrs.

Mr. A.A. Kumbhakoni, Add. Adv. General
with Mr. A.A.Vanarshe, A.G.P. for State.

Mr.T.N.Subramaniam with Mr. R.G.Ketkar, for the
Respondent No.2.

Ms. Simran Puri, for Respondent No.11

Mr. R.V. Walawalkar, i/b. Sameer Bhalekar, for
Responddent Nos. 5 to 10.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 25th April,2005

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. Rule in both petitions. By consent heard forthwith.

2. Writ Petition No.3212 of 2004 has been filed by the management of Padmashri Dr. Vithalrao Vikhe Patil Foundation's Medical College to challenge the order dated 11th October, 2004 passed by the respondent No.1 of which the Respondent No.2 is the Chairman. By that order the respondent No.1 directed that the admission of (1) Demde Rakesh Bhagwan, (2) Bahekar Pratik Pramod, (3) Sharma Gaurav Mahesh, (4) Shaikh Shifa Akif, (5) Sahir Jangam and (6) Bhole Parag Chandrakant are not approved and further directed the management to admit students who have secured more marks and whose names are given in the

earlier part of the order and who are respondent Nos. 3 to 8. It is this order which is the subject matter of the present petition.

3. Writ Petition No.9252 of 2004 has been filed by students to implement the order passed by the Pravesh Niyantran Samiti. The main relief sought is to direct the management to forthwith implement the directions given by the Pravesh Niyantran Samiti. The further relief is to treat them as having been admitted for the 1st year M.B.B.S. Course for the academic year 2004-2005 on or before 30th September, 2004. By way of amendment further relief is sought to give admission to the petitioners for the M.B.B.S. Course commencing from the year 2005-2006 with a further direction that the State of Maharashtra, Medical Council of India and the Maharashtra University of Health Sciences give approval to the admission of the said petitioners for the M.B.B.S. course commencing from the academic year 2005-2006 on the basis of the marks obtained by them at the CET held in the year 2004.

4. For the sake of convenience Padmashree Dr. Vithalrao V.K.S. Patil Foundation Medical College will be known as the Management, the students whose admission is sought to be cancelled will be known as the affected students and the students who seek admission will be referred to as the eligible students and the Pravesh Niyantran Samiti as the

Samiti. The rest of the respondents will be referred to by their respective names to the extent required.

5. To complete the narration of facts it may be pointed out that the stand of the eligible students both in their reply as well as in their petition has been that they as well as their parents were following up the matter with the Samiti as well as the Management. It is pointed out that on 2nd September, 2004 the Association of Management of Unaided Private Medical & Dental Colleges (AMDTC) had given undertaking to the Samiti that till the list of all the students to be admitted by respective Colleges are not cleared by the Samiti the admission will not be finalised. Inspite of the fact that they were eligible and were agreeable to comply with the necessary formalities including payment of fees, the eligible students were neither intimated nor informed and instead the affected students were granted admission.

6. On behalf of the affected students, one Pratik Pramod Bahekar has filed an affidavit. In that affidavit it is set out that the Samiti is constituted with the sole purpose of supervising the tests conducted by the Colleges and ensure that they are fair and transparent. The Samiti is not concerned with the admission procedure and has no power to pass directions such as those issued on 11th October, 2004. It is then pointed out based on the

pleadings of the management that the lists of students admitted by the management had been forwarded to the Samiti on 22nd September, 2004. If the affiant and the other affected students were to be denied admission on any account that could have been done well before 30th September, 2004 as they could have obtained admission to some other medical college. All of them were eligible for consideration for admission. They had kept a daily watch on the results on the web site and the notice board of the College. The various rounds whereby the seats were filled in have been set out. The last round was on 17th September, 2004 where the students who had obtained 131 marks and lower, were asked to report to the college. The earlier rounds were for students who had secured higher marks and it is only after those rounds when eligible students did not come forward, where the names of less meritorious students put up. It is, therefore, submitted that the petition should be dismissed.

7. On behalf of the Medical Council of India, an affidavit has been filed by A.K. Harit, Deputy Secretary (Legal), in Writ Petition No.9252 of 2004. The affidavit refers to various judgments of the Apex Court wherein the powers of the M.C.I. have been set out as also the directions issued by the Apex Court in the case of Islamic Academy of Education & Another vs. State of Karnataka & Ors. (2002) 6 SCC 697. In para.13 it is specifically set out that prayer of the

eligible students for admission for the academic year 2004-2005 or that they should be deemed to be treated as admitted on 30th September, 2004 is contrary to the judgment of the Apex Court in Medical Council of India vs. Madhu Singh & Ors. (2002) 7 SCC 258 considering the time schedule fixed for admissions. as to why the students cannot be admitted after the cut-off date. It is not necessary to advert to the other averments in the said affidavit.

8. The stand of the management briefly stated is as under:-

. (a)That considering the judgment of the Apex Court in **Islamic Academy of Education & Anr. vs. State of Karnataka and Ors., (2003) 6 SCC 697** and the directions issued in paragraphs 16 and 19 of the judgment, the Committee had no power to direct cancellation of admissions already done or admission of students.

. (b) The Committee itself had understood the extent of its jurisdiction and that is reflected in Exhibit "A" which is the note on the functions, duties and powers of the Samiti as set out in Writ Petition No.3212 of 2004. Once that is the case it was not open to the Samiti to have exercised the jurisdiction to cancel the admission granted and/or direct admission of students. At any rate it is submitted that in view of the judgment of the Apex

Court in **Medical Council of India vs. Madhu Singh and Ors., (2002) 7 SCC 258**, it was not open to the Samiti to have directed admission of students after the cut-off date set out by the Medical Council of India i.e. 30th September of the year for which admissions have to be given.

. (c) The affected students who are also parties contend that as the cancellation involved their civil rights no order prejudicial to them could have been passed without giving them a hearing. In the instant case there has been a violation of the principles of natural justice and fair play in as much as the Samiti has not given a hearing to the students affected and consequently the direction is liable to be set aside.

9. On the other hand on behalf of the eligible students and the Samiti it is submitted that it was within the jurisdiction of the Samiti to have issued directions for cancellation and admission as it cannot be said that such a power does not flow from the judgment of the Apex Court in Islamic Academy of Education and Ors. (supra). It is submitted that a reading of the judgment will indicate that there is power in the Samiti to examine whether the admissions have been done according to the merit list which was prepared based on the examination conducted. If the Samiti has come to the conclusion that there has been default in as much as ineligible students have been

made eligible or less meritorious students have been admitted, it is open to the Samiti to have issued the directions which it has issued.

. On behalf of the Samiti it is also submitted that considering the controversy this would not be a fit case where the affected students had to be heard as they were fully aware that they were less meritorious than the eligible students. Additionally, on behalf of the eligible students it is submitted that considering the judgment of the Apex Court in Medical Council of India (supra) if they cannot be admitted for the ensuing academic year as direction was issued after 30th September, 2004, the management ought to reserve equal number of seats from the management quota for the ensuing academic year and grant them admission based on the said reserved quota.

10. With the above background we may consider the first issue as to whether there was jurisdiction in the Samiti to have issued the directions as have been issued and which is the subject matter of the petition before this Court. At the outset it must be specifically set out that considering the judgment of the Apex Court in Madhu Singh (supra) there can be no admission of students after 30th September. Such a direction in view of the fixation of date as 30th September, by the Medical Council of India and as approved by the Apex Court was not within the

jurisdiction of the Samiti.

. The real controversy, however, is whether it is possible to contend based on the judgment in Islamic Academy of Education (supra) that the Committee i.e. the Samiti had power to issue the directions as have been issued. We may gainfully refer from the judgment of the Apex Court from paragraph 16, the relevant portion which reads as under:-

> "....After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and

> the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de hors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn."

. From the above what emerges is that the Committee may still examine whether any student has been admitted de hors merit and if so penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn. The power to impose punishment or cancel affiliation in these circumstances is not that of the Samiti, as no such power has been conferred, but either vests in the Medical Council of India or the concerned University which has been conferred statutory powers. A Judgment of the Apex Court cannot be read as a statute and so be interpreted. All that a Court must do is to ascertain the ratio and follow it. It is impossible to go beyond the ratio and try to extend what the judgment does not say. It will, therefore, be difficult to hold that if the Committee comes to the conclusion that a candidate has been admitted de hors merit then it has power to direct cancellation of the admission of the candidate considering the above observations of the Apex Court.

. The powers of the Committee has also been

spelt out in paragraph 19 of the judgment and we may gainfully reproduce a part of the said paragraphs which reads as under:-

> "...The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the

> basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not been followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove."

From the above observations, the powers of the Samiti have been set out. Atleast from this observations it is not possible to spell out a power to cancel admissions and/or to direct issuance of admissions though it may be possible to hold, but we are not commenting at this stage, considering that the directions were issued after the cut-off date 30th September, 2004, to bring to the attention of the College that there are students who have secured more marks and who are entitled to be admitted if otherwise they meet the requirements.

. How the the observations in Islamic Academy of Education and Anr. (supra) were understood by the Samiti can be understood by considering the note wherein it set out its powers. In that Note there is no discussion of issuing any direction for cancellation and/or admission. We must, therefore

hold, that the decision of the Samiti, to cancel the admission of the affected students was without jurisdiction and the further direction to admit the eligible students after the cut-off date i.e. 30th September was also without jurisdiction and on that count itself the order is liable to be set aside.

11. The other issue which requires consideration is whether the Samiti could have cancelled the admission of the affected students without giving them an opportunity of hearing. After the judgment of the Apex Court in A.K. Kraipak vs. Union of India, AIR 1973 S.C. 150, it is now the settled position in law, that the dividing line between an administrative action and quasi judicial action is so thin, that it is blurred. In D.K. Yadav Vs. J.M.A. Industries Ltd. (1993) 3 SCC 259, the Apex Court has observed that the distinction is now totally eclipsed and obliterated. Therefore, in every enquiry and every action which has the effect of affecting rights which gives rise to Civil consequences, the party likely to be affected by such an enquiry, whether it be by administrative or quasi judicial must be heard. The nature of the hearing will depend upon the provisions of the statute, Rules, Regulations or Administrative instructions. The least, however, of the right of fair hearing which means a fair opportunity to the party likely to be affected of being given a right to represent before passing of an order. In the instant case the Samiti before

directing cancellation of the admission of the affected students did not give them that opportunity.

On that count the action is liable to be set aside.

12. On behalf of the Samiti, learned Counsel points out that even if this Court has come to the conclusion that the action of the Samiti is contrary to the principles of natural justice and fair play, then in that event the matter must be sent back to the Samiti, to conduct an inquiry, as to whether the affected students had been admitted according to law considering that if the management had admitted the students by violating the merit list it is open to the University or the Medical Council of India to impose penalty or withdraw the recognition. There may be some merit in what is being contended on behalf of the Samiti. We do not however propose to answer it as it is not required to be answered. In the instant case we have found that there was no power to cancel the admission. Once that be the case and as the academic year is practically coming to an end, we see no purpose on the peculiar facts and circumstances of this case to refer the matter to the Samiti for a de novo enquiry. We must also bear in mind, the fact that the examinations for the present academic year will have to be held and the process for the ensuing academic year also will have to be started.

13. We make it clear that we have not decided on

the facts of the case as to whether the affected students were rightly admitted or whether the eligible students were wrongfully excluded. Considering the controversy involved and the facts in issue we do not propose to go into that aspect of the matter.

14. On behalf of the eligible students an additional ground has been raised that the management should be directed to reserve seats for them in the coming academic year. We asked the learned Counsel for the eligible students, if there be any judgment of Apex Court or of this Court, wherein such directions have been issued considering that the practice of reserving seats for following year has been frowned upon by the Apex Court. The reason being, that in every examination a fresh batch of students appear and get selected on their merits. Because of some action or inaction or wrong action on the part of the management, the students who otherwise would be eligible and may be more meritorious than the students were selected in the previous examination, would be deprived of being admitted on the ground that earlier batch of the students have to be admitted. This would be unreasonable and harsh on the students who had appeared for fresh CET. It is, therefore, not possible to grant the reliefs as prayed for by the eligible students that seats be reserved for them by the management for the ensuing academic year. That

contention must be rejected.

15. We are painfully aware that there may be cases where and specially in the last round where merit list on occasions may not be followed in the absence of a full proof mechanism. It is not possible for this Court to issue any direction more so considering the judgment of the Apex Court in Islamic Academy of Education & Anr. (supra).

16. In Writ Petition No.9252 of 2004 it is the contention of the eligible students that they have filed a complaint with the Medical Council of India. It will be open to the Medical Council of India to take such steps in accordance with law considering the observations of the Apex Court in the case of Islamic Academy of Education (supra).

17. In the light of that Rule made absolute in Writ Petition No.3212 of 2004 and Rule discharged in Writ Petition No.9252 of 2004.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)